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January 24, 2025

Re: New Research Reveals Dereliction of Duty by the Alberta Energy Regulator

Dear Minister Schulz, Minister Jean, Mr. Pushor, and Mr. Au,

In light of alarming new findings, it is clear that the AER is not fulfilling its stated mandate, and the public can no longer place its trust in the regulator. We, the nine undersigned organizations, are calling for the immediate resignation of the President and CEO of the Alberta Energy Regulator (AER) and all AER Board members. New board appointments need to reflect shared jurisdiction with Indigenous communities and independence from fossil fuel companies. We are also demanding that the AER establish and enforce strict cleanup and reclamation timelines for mine sites, waste products, and related infrastructure.

New research from Dr. Kevin P. Timoney, published on January 3, 2025, concludes that the Alberta Energy Regulator (AER) is failing to gather credible and relevant environmental data, failing to conduct routine on-site inspections, and being dishonest in its reporting of spill incidents with regards to oil sands tailings spills in Alberta.

The study analyzed data from 514 tailings spills reported in the AER's database that occurred over 10 years between 2014 and 2023 and compared the reported information against supplemental data on those spills obtained from the AER by a freedom of information request.

Dr. Timoney found that **97 percent of tailings spills were not inspected by the AER**¹ – contradicting the AER's claim of routine spill inspections. The findings also show that for spill sites

¹ Kevin P. Timoney, "Regulatory Failure to Monitor and Manage the Impacts of Tailings Spills, Alberta, Canada," *Environmental Monitoring and Assessment* 197, no. 2 (January 3, 2025): 125, <https://doi.org/10.1007/s10661-024-13416-1>.

where photo documentation is provided, approximately 41-54 percent of the sites show evidence of environmental harm – refuting claims from the AER that none of the 514 spills caused environmental damage.

This research demonstrates that the AER is failing at its own stated mandate to “provide safe, orderly, and environmentally responsible energy development” – putting ecosystems, Indigenous Peoples, and Albertans in harm’s way by letting oil sands operators off the hook for numerous tailings spills.

Mounting evidence shows that the AER operates without sufficient public transparency, with minimal accountability, and that it has extraordinary discretionary powers which it uses to prioritize the interests of the industry it is responsible for regulating.

In February 2023, 5.3 million litres of tailings spilled from a storage pond at Imperial’s Kearl oil sands mine. Following this news, the AER issued a public notice stating that significant volumes of tailings had been leaking at the Kearl mine for nearly nine months, since at least May 2022. Neither the AER nor Imperial notified any of the Indigenous communities within whose territories the Kearl mine is situated, nor any downstream communities while this leak was happening.

On August 22, 2024, the AER announced that it had fined Imperial Oil \$50,000.00 for the Kearl incident, after concluding that Imperial had contravened two of its approval conditions. However, this \$50,000.00 penalty was significantly lower than it should have been, with the AER giving Imperial a 95 percent discount on the fine.

The AER claims that the fine represents “the maximum base penalty table amount permissible under the regulation,” but that claim has been disputed. ENGOs and First Nations,² as well as lawyers at the University of Calgary³ have demonstrated that the AER had the authority to issue Imperial a much larger fine of at least \$1.3 million, but opted not to. This decision is another example of the AER putting the interests of oil sands corporations first, while putting communities and ecosystems at risk of harm.

The AER’s calculation of this administrative penalty is inconsistent with the AER’s precedent, and indicates that the AER is unevenly applying its penalties across industries for no apparent reason. On December 17, 2024, the AER issued a \$20,000.00 fine against CST Coal Canada Ltd. for contravening its approval under the *Environmental Protection and Enhancement Act* by releasing wastewater into the Smoky River. CST was charged \$22,000.00 for a violation lasting five days, whereas Imperial was charged only \$50,000.00 for a violation lasting 263 days.

Other recent examples of the AER prioritizing industry include (but are not limited to):

² Alberta Wilderness Association et al, “Request for Reconsideration of Administrative Penalty Director’s Decision 202408-009” (November 27, 2024), <https://ecojustice.ca/wp-content/uploads/2024/11/2024-11-27-Request-for-Reconsideration.pdf>.

³ Drew Yewchuk, “Administrative Penalties at the Alberta Energy Regulator: Regulatory Penalties for the Kearl Oilsands Leak,” *ABlawg: The University of Calgary Faculty of Law Blog* (blog), September 4, 2024, https://ablawg.ca/wp-content/uploads/2024/09/Blog_DY_Kearl_Oilsands.pdf.

- The AER's decision to not reconsider its approval of Suncor's flawed Operational Plan for the McClelland Lake Wetland Complex (MLWC) which poses a significant risk of irreversible damage to the unmined portion of the MLWC.
- The AER's decision to review Northback Holdings Corporation's applications for a coal exploration program on the Grassy Mountain coal deposit, despite the existing moratorium on all new coal projects in the Eastern Slopes. The Alberta Court of Appeal is currently reviewing this decision, as there is evidence that the AER may have erred in its justifications for the review.
- The AER's decision to not require an environmental impact assessment for the Pathways Alliance's carbon capture and storage (CCUS) project. This decision was made by the AER despite the CCUS project including over 600 kilometres of pipeline, and an underground carbon storage area of approximately 18,000 square kilometres.

Taken together, these incidents represent a dereliction of duty by the AER to regulate Alberta's energy industry in a safe and environmentally responsible manner. As other legal experts have previously concluded, the AER and its decision-making record bear the hallmarks of a captive regulator, which "has prioritized its relationship with the oil and gas industry over accountability to the public."⁴

Sweeping changes are needed to ensure that Alberta's energy regulator prioritizes the health and safety of Indigenous Peoples, Albertans, and ecosystems. At a bare minimum, all board members, as well as the President and CEO of the AER must resign. Currently, 100 percent of the AER's Directors have ties to the energy industry. Industry cannot be trusted to regulate itself, and any entity responsible for making decisions related to Alberta's public resources should be independent and unbiased.

New board appointments need to reflect shared jurisdiction with Indigenous communities and independence from fossil fuel companies. One of the first objectives of this new AER board should be to respond to the results of Dr. Timoney's study and to ensure that spill incidents are investigated and publicly reported with full transparency.

In addition, the AER needs to immediately establish and enforce strict timelines for the decommissioning and reclamation of mine sites, waste products, and other related infrastructure (e.g., wells, pipelines, tailings ponds, contaminated land etc.) to begin addressing the legacy of environmental harm caused by its mismanagement of energy regulation.

The AER can no longer be permitted to operate with impunity for the benefit of corporate interests while polluting our rivers, destroying our landscape, and putting communities across Alberta in harm's way.

Sincerely,

Alberta Wilderness Association
Environmental Defence Canada

⁴ Drew Yewchuk, Shaun Fluker, and Martin Olszynski, "A Made-in-Alberta Failure: Unfunded Oil and Gas Closure Liability," *The School of Public Policy Publications*, October 11, 2023, Vol. 16 No. 1 (2023), <https://doi.org/10.11575/SPPP.V16I1.77468>.

Keepers of the Water
Council of Canadians, Edmonton Chapter
For Our Kids Alberta
Alberta Liabilities Disclosure Project
Canadian Parks and Wilderness Society - Northern Alberta
Canadian Association of Physicians for the Environment
Calgary Climate Hub